

MAINE HARNESS RACING COMMISSION

MINUTES OF MEETING

January 8, 2015

Gambling Control Board Conference Room

Department of Public Safety Building

45 Commerce Drive, Augusta, Maine

Commission Members Present: Barbara Dresser, Chair, Gary Reed, Dirk Duncan and William McFarland.

Staff Members Present: Ron Guay, AAG, Henry Jackson, Miles Greenleaf, and Carol Gauthier.

ADJUDICATORY HEARINGS:

1. Commissioner Dresser stated that she would hand the meeting over to Attorney Guay who will be the hearing officer for today. Attorney Guay stated that we have 9 adjudicatory hearings today. He asked for a roll of those present today. The following were present: Steve Vafiades, David Miller, Allie Hiscock, Michael Hitchcock, Stephen Murchison, and Craig Ryder. He also stated that it was his understanding that the State may have a proposal to deal with a few of these hearings, and at this time before we decide the order of the hearings and open any particular hearing we will hear from Mr. Jackson in terms of his proposal. Mr. Jackson stated that he would like to propose to the Commission that the matter involving Mr. Vafiades, Mr. Miller, Mr. Hiscock, Mr. Hitchcock, Mr. Murchison and Mr. Ryder be treated in a matter whereby the hearings would be continued until July 1, 2015; that any violation of Commission rules under Chapter 11 between now and July 1 would require a hearing for the matter before the Commission, today's as well as any other violation that would occur between now and July 1; and, if no violation occurs between now and July 1, that these matters would be dismissed. These are all violations of the controlled medication rule. Attorney Guay stated that for his understanding the following: Mr. Vafiades, Mr. Miller, Mr. Hiscock, Mr. Hitchcock, Mr. Murchison and Mr. Ryder. Mr. Jackson stated that is correct. Attorney Guay stated that the motion would be for a continuance until the July meeting and if no allegations of violations occur prior to July 1<sup>st</sup> at the July meeting these cases will be dismissed. Mr. Jackson stated that is correct. Attorney Guay asked the Commission if they had any questions regarding any of these cases. From a due process standpoint, the Commission doesn't need to vote on a motion for continuance. The hearing officer can grant it. He asked if they would like to proceed with a hearing or do you wish to proceed with Mr. Jackson's recommendation. Commissioner Reed stated that he was comfortable with Mr. Jackson's recommendation. Commissioner Duncan agreed with Mr. Jackson. Commissioner Dresser agreed also but with the understanding that if anyone wants to have a hearing he would be allowed to proceed with one. Attorney Guay stated that is what he was going to ask next. Under the rules the hearing officer can grant a continuance and before we do that he will ask each person whether or not they would like to do his hearing today because the notice of hearing has been issued, technically you have a right to a hearing and you have the right to that hearing today. If for some reason you want to litigate this today. He asked Mr. Vafiades if he would like to continue the hearing until July. Mr. Vafiades stated "yes". Attorney Guay stated for the record, Mr. Vafiades has indicated yes. He asked Mr. Miller if he would like to continue the hearing until July. Mr. Miller stated "yes" but he had a question. Mr. Miller stated that his question is, he was accused of the same thing a month ago and he served out a different sentence. Why can't that fall under this same jurisdiction? Attorney Guay stated that what we have today is a notice of hearing for this violation and what needs to be decided on this violation is whether or not you want to have your case heard in July or whether you'd like to go for it today. Mr. Miller stated that he would like to continue to the July meeting. Attorney Guay stated that Mr. Miller has indicated he does not object to the

continuance. He also suggested that we come back to Mr. Miller's question in case people would like to leave. He asked Mr. Hiscock if he would like to continue his case. Mr. Hiscock stated "yes". Attorney Guay asked Mr. Hitchcock if he would like to continue his case to July. Mr. Hitchcock stated that he would take the continuance but he had a couple of questions. Attorney Guay stated if they pertain to the continuance to go ahead. Mr. Hitchcock stated that he knows there are new rules going into effect in the near future and if these new rules get put in place right off our continuance isn't going to be up until July 1<sup>st</sup> and if the new rules are in place say March at the end of March and someone gets a positive at the end of March they're going to be under the new rules. He is still going to be held accountable until July 1<sup>st</sup>. Attorney Guay stated that you could be held accountable today. Mr. Hitchcock stated that he understands that and he understands that they are working with them, but he doesn't think he should be on the chopping block until July 1<sup>st</sup>. Mr. Jackson stated that if the new rules are in effect and he would expect them to be in effect by the middle of March if not before then, then those rules would take precedence over the rules that currently exist. If you had an excessive violation he believes that the rule says you'd be getting a warning and that's it. He has asked the Commission to take a look at this that would Mr. Hitchcock's violation of an excessive flunixon of 27 would that constitute and kick in this hearing come back before the Commission. Mr. Hitchcock stated that say if the rule goes in place April 1<sup>st</sup> just in his opinion. He doesn't feel he should have to serve any more time no later than July 1<sup>st</sup> and no earlier before the rule goes in place. Commissioner Dresser stated that the problem is that they have to work within the bounds that they have in front of them right now, and if they do a warning then that becomes an adjudicatory finding and they would have to have the return of the purse money and the horse would have to be suspended. Mr. Hitchcock stated that if the rule goes in place April 1<sup>st</sup> and he gets another high Bute before July 1<sup>st</sup> but under the new rule it constitutes as a warning. Commissioner Dresser stated that at that time she hopes they have a Commission that would take that into consideration and keep up to speed with what's happening at that time. Attorney Guay stated that you do have the opportunity to proceed today if you want to. He asked Mr. Hitchcock if he agrees to continue his case until the July meeting. Mr. Hitchcock stated "yes". Attorney Guay stated that Mr. Hitchcock indicated that he agrees. He asked Mr. Murchison if he agrees to continue his case until the July meeting. Mr. Murchison stated "yes". Attorney Guay stated that Mr. Murchison agrees and Mr. Ryder if he agrees to continue his case to the July meeting. Mr. Ryder stated "yes". Attorney Guay stated that they had a question from Mr. Miller. Mr. Miller stated that there was a different type of judgment handed down at that time. Why would not the Bute and Banamine and now you're setting a precedence why wouldn't those fall under these same jurisdiction with just a warning. He understands that other people have gotten just a warning too instead of having to pay back the purse. Commissioner Dresser stated that she can't speak for everyone but in her opinion the difference between then and now is that he had multiple violations at the same time and these are individual violations that they are looking at separately. Keep in mind, Mr. Miller that they're considering these more or less as first violations and they could have categorized his differently today but they didn't. Mr. Jackson stated that the Commission did have a finding and the Commission imposed a penalty of a suspension with all of it suspended, a fine with all of it suspended and the only thing the Commission requested is the return of the purses for multiple violations. Commissioner Dresser asked if there were any other questions. Attorney Guay stated that he would grant the motion for a continuance on Mr. Vafiades, Mr. Miller, Mr. Hiscock, Mr. Hitchcock, Mr. Murchison and Mr. Ryder. These adjudicatory hearings will be continued until July 2015 meeting of the Maine Harness Racing Commission with the stipulation that if no allegations of violation of the rules occur prior to July 1<sup>st</sup> for Mr. Vafiades, Mr. Miller, Mr. Hiscock, Mr. Hitchcock, Mr. Murchison and Mr. Ryder will be dismissed at the July meeting. Those people for those hearings are free to go.

2. Attorney Guay stated that he would call the hearing to order regarding complaint number 2014 MSHRC 0020 in re: Philip Sowers, Jr. He identified the parties as Mr. Sowers is present and represented by Attorney William Childs and representing the Department is Mr. Jackson. He asked questions to the Commission members and they responded with “no” on both questions. He asked Mr. Childs if he had any objections to the prehearing proceedings up to this point. Mr. Childs stated that there is a question they need to review regarding the original decision rendered by Mr. Bacon in the cited rule 46.3C and the notice today says 46.1. He would like to deal with that. Attorney Guay asked so he could understand is his issue that the notice of hearing is inconsistent with the decision. Mr. Childs responded with “yes”. Attorney Guay stated that the issue raised is whether or not there’s a defect in the notice of hearing. The notice of hearing includes an additional count. He asked Mr. Childs if he had whatever document it is, the judges’ decision. He stated to Mr. Childs that he would have an opportunity to argue with the Commissioner’s the differences between the notice of hearing and the judges’ decision so he would suggest he do that as legal argument. He doesn’t think he is suggesting that we can’t proceed today. Mr. Childs stated no we can proceed today. He was just pointing out procedurally that he was citing by the presiding judge for a violation of 46.3C and yet the agenda for today also includes 46.1 which is a different rule citation then what he was cited for by the presiding judge. Attorney Guay asked Mr. Childs when did he receive the notice of hearing. Mr. Childs stated that he didn’t know exactly. Attorney Guay asked if he raised this objection prior today. Mr. Childs stated no. Attorney Guay stated that they will continue with the hearing and he would have the opportunity to argue the legal relevance of the rule citation in the notice of hearing. Mr. Childs stated that his point is if the judge fines a rule violation and cites a particular rule and there’s an appeal of that that’s the decision they’re appealing from. Attorney Guay stated that is correct. Mr. Jackson stated that he would ask the Commission not consider the citation in the notice of hearing or on the agenda. It was an error on his part. Attorney Guay stated that would help for legal argument. Mr. Bacon stated that on his original notice that it did not have 46.1 on it. Mr. Jackson stated that Mr. Bacon is correct. Attorney Guay stated for procedurally this hearing on the notice of hearing there’s been an indication by Mr. Jackson that the citation of rule Chapter 46.1 was made in error in the notice of hearing and that the proceeding today will not deal with any alleged violation of rule Chapter 46.1. Are there any other housekeeping items in terms of the prehearing? Mr. Childs stated that the exhibits that Mr. Jackson provided to him today that being 1 through 10 there is no objection to the exhibits. He also provided to him a witness list today and he is going to ask that the witnesses be sequestered. Attorney Guay stated that the nature of the issue will be the observations and opinions of the witnesses as a he said she said kind of hearing. Mr. Childs stated that it is both legal and factual. Attorney Guay said ok. He asked if Mr. Sowers would be present. Mr. Childs stated that you don’t sequester the party to the proceeding just the witnesses. Attorney Guay asked Mr. Jackson if he had a problem with sequestering the witnesses. Mr. Jackson stated no he has no problem with that and Mr. Greenleaf would be the person responsible for sequestering the witnesses. Attorney Guay stated that he would ask both parties if you anticipate the potential for recalling a witness for a rebuttal witness then we would have that witness re-sequester. He asked for the exhibits from Mr. Childs. Mr. Childs stated that he had no exhibits. Attorney Guay asked Mr. Jackson for his exhibits. Mr. Jackson presented the following exhibits: Exhibit 1-License application of Mr. Philip Sowers, Jr. for 2014; Exhibit 2-Offical copy of the race for October 7, 2014; Exhibit 3-Copy of the medication sheet indicating that Northern Smokeout was to be administered; Exhibit 4-Judges daily report for October 7, 2014 that #8 horse in the six race was scratched, unfit to race; Exhibit 5-Notice of Judges’ Decision is dated October 14, 2014 for the alleged infraction on October 7, 2014; Exhibit 6-Request for a stay of penalty filed by Mr. Sowers; Exhibit 7-Appeal filed by Mr. Sowers; Exhibit 8-Notice of Hearing; Exhibit 9-Copy of Chapter 3 Officials and Race Track Personnel and Exhibit 10-Copy of Chapter 7 Section 46 Subsection 3 paragraph 2. Attorney Guay stated that the State has moved for exhibits 1 through 10 be admitted. Mr. Childs has no objection to these being admitted.

For the record, the following people were identified for the state: Shane Bacon, Jean Thayer, Dr. Rachel Fiske, Michael Cayouette, Michele Gatie, Shane Wright, Pamela Merrill and Ronald Merrill. Witnesses for the appellant as introduced by Mr. Childs are Lindsey Smith and Mr. Sowers. Attorney Guay also asked if the witnesses were present. He gave the oath to all witnesses. All witnesses stated yes. He stated there was a motion from Mr. Childs prior to opening statement. Mr. Childs stated that he would like to make a motion to dismiss. Mr. Sowers was not the trainer of the horse, Northern Smokeout that was scheduled to race at Bangor Raceway rather Shane Wright was the trainer listed on the program. Mr. Wright was there that evening to race his horse. Mr. Sowers nearly brought the horse to the race track and brought the horse into the barn area and left the horse for Mr. Wright. That does not constitute trainer ship before Mr. Sowers. Furthermore, Mr. Wright was charged with being the trainer of the horse was found to be in violation of his trainer responsibility and was penalized for it. He does not believe there is any reasonable way the Commission could find that Mr. Sowers was the trainer of Northern Smokeout. He asked the matter to be dismissed. Mr. Jackson asked the Commission to disregard that motion to dismiss. Mr. Sowers assumed the responsibility of that horse the minute he loaded that horse into his trailer and transported that horse to Bangor and took that horse into the paddock. Had the horse administered Lasix, paid for the Lasix and paddocked the horse to the stall required. Therefore, Mr. Sowers became responsible for that horse from the time he picked up the horse and that during the hearing for Mr. Wright indicated that Mr. Sowers was in fact the trainer for that horse for that day at Bangor Raceway until he appeared from New Brunswick. Attorney Guay stated that Mr. Childs motion is based on that Mr. Sowers was not the trainer because of the presence of certain facts in terms of the fact without listening to them all but there was certain facts because there was one other trainer. As he understands this the State's argument is that there are facts that the state anticipates introducing to the Commissioner's to find that Mr. Sowers had assumed the role of a trainer. Is that his understanding? Mr. Jackson stated that was correct. Attorney Guay stated that he is going to deny the motion but he wants the Commissioners to understand it is a legal argument the fact that he is dismissing it does not mean that he agrees with the states position that Mr. Sowers was the trainer. The reason why he is rejecting the motion is he thinks that during the hearing the facts will have to be heard and arguments made as to the facts to whether or not Mr. Sowers had assumed the role of a trainer. He is looking at rule 46.3 that defines certain behaviors that identify the duties and responsibilities of a trainer. Is it your contention that there's going to be no facts introduced today or the state will not be able to introduce any facts under any of these sections. Mr. Childs stated that his argument is that Mr. Sowers was not the trainer rather Mr. Wright was the trainer. Mr. Wright was charged with the violation concerning this horse. Mr. Wright admitted to the violation and has been punished for the violation. It's a matter of the Commission records. It's quite clear who the trainer of the horse was and consequently Northern Smokeout on October 7, 2014 is Shane Wright. If you just take administrative notice of your own findings and other matters. Mr. Wright has been adjudicated as being the trainer of this horse. Mr. Jackson stated that he would stipulate that the trainer of record of the horse Northern Smokeout on October 7, 2014 was Shane Wright; however, Mr. Wright left the horse in the care of Mr. Sowers while he was in New Brunswick. Therefore, Mr. Sowers is responsible for the custody and care of that horse in the absence of Mr. Wright. Mr. Wright was found in violation of 46.3C for not notifying the judge that he was not going to be in the paddock, and telling the judge who was responsible for that horse prior to the race. That is what is required under 46.3C. Attorney Guay stated that Mr. Childs just raised another issue and another argument. Is it his understanding was Mr. Wright disciplined for leaving the horse in the paddock? Mr. Jackson stated that Mr. Wright was penalized for two violations. The first one was Chapter 7 Section 46.3C for not notifying the presiding judge that he would not be in the paddock on October 7, 2014 and indicating to the presiding judge who would be responsible for the horse during that race. The other violation that Mr. Wright was cited with was disobeying a judge's order and that was because the horse had been scratched unfit to race and was put on the steward's

list and he was advised that horse would not be able to race for seven days. The next morning the horse was declared in at Scarborough Downs to race on October 11, 2014. Attorney Guay stated that his answer is that Mr. Wright was not cited for leaving the horse in the paddock on October 7, 2014. Mr. Jackson stated no he was not. Attorney Guay stated ok, there has been a motion to dismiss the matter on two theories. One is as a matter of law, there is no basis that the Commission could find that Mr. Sowers was the trainer under section 46. He is going to deny that based on the plain language of section 46. He thinks the parties will have the opportunity to introduce evidence as to whether or not Mr. Sowers was in fact the trainer and the second argument he heard is that the trainer of record had been previously disciplined regarding the events of October 7, 2014. He is going to deny on that basis because his understanding by the state that he does not have the actual disciplined before him but he is not hearing Mr. Childs disagree with the state's description of the previous discipline that it was for an offense that was separate from the actual leaving the horse in the paddock. Motion to dismiss is denied, we'll continue with the hearing. Mr. Childs stated in that regard he'd request the motion to dismiss be presented to the Commission and let them decide to dismiss. If they agree with his argument, legally Mr. Wright was listed as the trainer and was charged as being in violation of the trainer responsibility rule admitted to it and paid a fine on it. Attorney Guay stated that he's not sure how they'd be able to decide that without hearing the facts. Mr. Childs stated that the facts are undisputed that Mr. Wright was the listed trainer and Mr. Wright was charged with a violation of the trainer responsibility rule, and Mr. Wright was adjudicated to have violated the rule. The executive director is now attempting to charge a second person with being the trainer of the very same horse. We are going to have two trainers on one horse. Attorney Guay stated that if we were to present a motion to the Commissioners would it be fair that the motion would be that prosecution under this section is not possible if there was a trainer of record for the animal. He is trying to understand. What would they be deciding? What is the specific? Mr. Childs stated that as a matter of law the trainer ship of Northern Smokeout for October 7, 2014 has already been established and adjudicated by this Commission. Now charge a second person with the violation as to who the trainer was and who was responsible for Northern Smokeout has already been established. Attorney Guay stated that his understanding is that the violation was for failure to inform the judge of the change of trainer ship. Mr. Childs stated that the duty to inform the judge is the duty the trainer has and so the trainer, Shane Wright, was adjudicated for having violated that rule. The duty to inform the judge only comes into play if you're the trainer. If you're not the trainer you don't have the duty to inform the judge of anything because you're not the trainer. Attorney Guay asked Mr. Jackson what specifically. Mr. Jackson stated that Mr. Childs is confusing the issue by trying to make you, as well as the Commission, believe that Mr. Sowers is being charged as the trainer. Mr. Sowers is being charged for violating not caring for and guarding the horse that was under his care. He has stipulated and the program says that Mr. Wright is the trainer of record; however, Mr. Wright was not present. Mr. Sowers assumed the responsibility of that horse by transporting that horse to Bangor Raceway knowing that Mr. Wright was not there and did not accompany him. He took the horse to the veterinarian for the administration of Lasix, paid for the administration of Lasix and then stabled the horse in the paddock. Mr. Sowers is not being charged as a trainer violation. He is being charged for not guarding and caring for the horse while it was in the paddock. He did not stand there and guard that horse nor did he assign anyone to guard that horse after he had delivered it to the paddock. He stipulated that Mr. Wright is the trainer of record and Mr. Sowers took on that responsibility of caring for that horse and guarding that horse in the absence of Mr. Wright. Attorney Guay stated that your case is not that Mr. Sowers assumed the duties of a trainer. Mr. Jackson stated that is correct. If you look at the rules the trainer is responsible for any actions of a third party. In other words, if the horse had raced and came up with a positive test and it was under the care of Mr. Sowers, Mr. Wright would have been charged with that positive test because he is the trainer of record. Mr. Sowers would not have been charged. However, by taking the horse in the paddock and leaving it unguarded

he allowed something to happen to that horse and it was scratched as being unfit. It was the responsibility of Mr. Sowers to see to it that horse was guarded. Attorney Guay asked as a trainer. Mr. Jackson stated as a substitute trainer for that day and that's what they refer to them as being. Attorney Guay stated that your contention is in fact that, and the Commissioners would have to agree with you, that Mr. Sowers became the trainer and thus liable under 46. Mr. Jackson stated yes. Attorney Guay asked could Mr. Sowers have been responsible under 46 if he was not the trainer. Mr. Jackson stated yes he could be as a licensee. The owner could do it or a groom could do that. Attorney Guay asked if a groom would be cited with a violation of the trainer's duty. Mr. Jackson stated if he left the horse unguarded, yes. Not as a trainer no. The trainer of record, if he is unable to be at the track where his horse is racing that day, is to notify the presiding judge of his absence and who will be responsible for the horse that day. Attorney Guay stated that his legal argument is once they do that that person who's responsible for the horse is responsible as the trainer. Mr. Jackson stated yes. Attorney Guay stated that was the piece he was missing. Commissioner Duncan asked Mr. Jackson that he said that Shane Wright wasn't there and Mr. Childs said Mr. Wright was there. He thinks that's something that got to be established later, right. Mr. Childs stated that we could stipulate that Mr. Wright arrived later in the evening. Commissioner Duncan stated ok. Mr. Childs stated that Mr. Wright was not present when Mr. Sowers brought the horse to the track. Attorney Guay asked what do the Commissioners want to do. What you would have before you is we could have a deliberation on the legal question before we get to the facts. His understanding of the legal question is whether or not Mr. Sowers can be held responsible under section 46 because that's duties of a trainer. Mr. Childs' argument is that there was another trainer of record and that trainer Mr. Wright had also been found guilty of section 46 for that horse for that day and as a result of that it's not possible for Mr. Sowers to be a trainer under section 46 and be held accountable. Mr. Jackson's argument he thinks is to identify who is responsible for the horse and that that language allows for someone other than the trainer of record to be responsible under this section. Is that something that you would like to deal with at this point or wait till the end of the hearing? Mr. Childs has asked that you consider that legal question at this point because if you find that in no way possible under any facts that would be presented by the fact that Mr. Wright was the trainer of record and because Mr. Wright by the fact that another disciplinary matter found him to be the trainer of record on that date that there's no way possible that Mr. Sowers could be responsible under 46 and if that's the case we don't need any fact witnesses. How would you like to proceed? Commissioner Dresser stated that she was looking around to see if there's anyone with strong opinions. Commissioner Reed stated that he would like to hear the witnesses involved particularly the presiding judge as to whether or not he was informed that anyone was responsible for that horse. Commissioner Duncan stated that he thinks first they need to discuss the rules a little bit that are involved in this case. Commissioner Dresser stated that she agrees with Commissioner Duncan on its face that she is not aware of anything that says that anyone other than trainer is responsible under the trainer responsibility rule but it sounds like. Commissioner McFarland stated that he concurs with Commissioner Dresser. Under the basic trainer rule it seems like an offense that was committed a violation has been in fact penalized and he has a question to Mr. Jackson. Is any of what you just discussed with them and explained going to be corrected in the new rules with respect to talking about another individual bringing a horse into the paddock other than a trainer. He has witnessed where a lot of horsemen bring horses into a paddock and they may not be the trainer at the time but they're helping to transport. He would struggle with this discussion with some of the direct comments you made with respect to trying to plug that into what it is that we have guiding us with respect to duties of a trainer. He is not disagreeing with what you're saying but it's hard to glean that from what we have here to look at. Mr. Jackson stated that he would explain. We had an issue several years ago where by individuals were bringing horses to the paddock that were not the trainer of record because the trainer may have been at Scarborough and could not be at Bangor. They asked that the Commission adopt a rule whereby the trainer of record

could identify someone to be responsible for that horse in their absence. They requested that so they could no longer be penalized for not being in the paddock on that race day when their horse was racing, so the provision was put in whereby the trainer of record must notify the presiding judge of his or her absence and explain why they were absent and identify someone to be responsible for that horse in the paddock for that day. It did not absolve the trainer of record from being responsible for any violations of Chapter 11. Therefore, the person identified to take care of that horse for that day became the trainer of the day for that horse or the substitute trainer for that horse for that day. If we go forward he has witnesses that will testify that Mr. Sowers assumed the responsibility of the trainer of that day of that horse until Mr. Wright arrived at the track. Mr. Wright was in New Brunswick, Canada and was in route to Bangor the horse was stabled in Windsor and the horse was transported by Mr. Sowers. Therefore Mr. Sowers assumed the responsibility of that horse until Mr. Wright appeared. Therefore he was a substitute trainer from the time he left Windsor until Mr. Wright appeared prior to race. Therefore that explains 46.3C and why we have substitute trainers for the day. It's not a dual trainer ship. Someone assumes the responsibility in place of the trainer because the trainer is unable to be there for whatever reason. Mr. Wright was charged with a violation of 46.3C because he didn't notify the presiding judge that he wasn't going to be there and that Mr. Sowers was going to be responsible for the horse. That was his violation of the rule. Mr. Sowers is charged with not guarding that horse once that horse was delivered into the paddock. He was responsible for that horse and that's what the charge is. Attorney Guay stated that the issue he thinks right now is whether or not it's possible under 46.3C that you have a person assume the role of a trainer and that person then at that point in time becomes responsible as the trainer. The trainer must notify the presiding judge of his absence and identify who would be responsible for that horse. He thinks you need to look at that language and make an interpretation when it says be responsible of that horse. What does it mean? What is the intent of that? Specifically in terms of this 46.3C is it possible to have someone other than the trainer of record on a race day at a track become responsible as a trainer. He would suggest that you look at the language of 46.3C and it would appear that the language is intended that that would occur. That would be his legal advice because otherwise it's kind of nonsensical. The theory is you could have a trainer of record and it says the trainer has to be present at the paddock from when the horse gets there until the race is done. But yet they get a free pass by just telling the judge well I'm not going to be there and therefore there is no longer a trainer. Commissioner Dresser stated that it has always been her understanding of the rule that the trainer responsibility means that the trainer is ultimately responsible regardless of what happens. Correct her if she is wrong, she is not aware of any other instances where someone other than the trainer has been charged with a violation under this section. She thinks if they had a rule that says while this responsible person is responsible for the horse they can be penalized as a trainer. That would be different. She would be willing to wait and hear is your explanation of how we get there with what we have here. That's what she is missing that piece. Commissioner Duncan stated that his point reading 46.3C the trainer will be present in the paddock from the time his or her horse enter the paddock until all of his or her horses have raced. The horse will be scratched if the trainer is not in the paddock pursuant to this rule unless the trainer receives approval from the presiding judge, so in theory this horse should have been scratched when it got to the track. Mr. Jackson stated that if you stop there you are absolutely correct. However, there is a second sentence to that paragraph that allows the trainer not be there as long as he identifies someone to be responsible for that horse. Commissioner Duncan stated that that didn't happen because Mr. Wright was cited for not getting approval from the judge. Attorney Guay stated that would be a factual finding. Commissioner Duncan stated that he is all in favor of listening to the witnesses and going through this but we have always gone by the rules. To him the horse should have been scratched when it got to the paddock. Is he right or wrong? Mr. Jackson stated that if you stop there you are correct. Commissioner McFarland stated that it would make it a whole lot easier to follow your line of thinking, if in fact, the

so called substitute trainer if there was some language in this rule that indicated. The mere fact that, from what Commissioner Duncan just said, the trainer has to have specific approval from the presiding judge to be absent. One would think that if that were the case than there would be a substitute trainer if that horse was there; however, you might think that but that's not what it says and from his standpoint he would feel a whole lot more comfortable if there were some indication that a substitute trainer would than assume responsibilities of the absent trainer. That would be approved by the presiding judge under his authority and jurisdiction. He understands of what previsions made in the past but there's no change in the rule. There is no change here to guide him with respect to asserting those kinds of previsions. Attorney Guay stated that they have a motion for a finding of law. He would preference his comments. He is no way taking a position of whether Mr. Sowers was the trainer or not. He is purely looking at it as a matter of law. If you look at this rule and conclude, because it does not say you become a substitute trainer upon responsibility then it's inconsistent with the first part which says the trainer has to be in the paddock. His concern is if the industry believes and it's up to you the Commissioners interpret your rules but you need to understand that the consequences of your interpretation if in fact the responsible person is not the trainer then by operation of the first part of that rule the horse is going to be scratched; so that's what's going to happen. If you find for Mr. Sowers based on the legal precedence that, the person declared responsible is not the trainer in that moment in time by operation of the first part of that rule, that horse is going to be scratched. He's not sure what the intent of the rule is. That's what you need to decide what the intent of the rule is. Commissioner Dresser stated she thinks the rule wasn't written as well as it could have been, but she believes that's exactly what the intent was, that trainer must be present unless previsions have been made otherwise. But going from there to saying that if let's say that Mr. Wright had done everything he was supposed to do, he had called ahead of time and gotten permission from the judges and a problem occurred. She still doesn't believe someone other than the trainer of record could be charged under the duties of trainer rule. That's what she is struggling with and if Mr. Jackson is able to explain that to her that's fine. Attorney Guay stated that by virtue of the judge saying that the responsible person is the trainer that's how it would fall under section 46. He's not saying that's what it says but if you look at the rule in its entirety. Commissioner Dresser stated she believes that the rule has always been and her understanding of the rule has always been is the trainer is ultimately responsible whether they're in the paddock or not. In this case, she thinks in deciding whether or not the rule applies she doesn't think that whether or not Mr. Wright told the judges that Mr. Sowers would be responsible or not even applies looking at it at this level. We're making a determination of whether or not someone other than the trainer can be charged with a violation of section 46. She's just not there yet. Attorney Guay stated that she thinks it's a different argument than what Mr. Childs is suggesting. Can we have stipulations? What he is hearing is you're not inclined to vote on a finding that as a general matter of law to interpret the rule to say one way or another, but what he is hearing you say is you're inclined to hear additional facts which we may not need with witnesses. They may be stipulated and based on those facts you may come up with a legal conclusion. Commissioner Dresser stated possibly. Attorney Guay stated that he thinks he heard one of the Commissioners say is since Mr. Sowers was not recorded and was not the responsible person that even if you were to interpret 46.3C to make that person then the substitute trainer if you did in fact think that's what the rule said you're not sure that's what happened in this case. Commissioner Dresser asked Attorney Guay to remind them again of what the actual motion was. Attorney Guay stated that the motion was for a finding of law that Mr. Sowers under rule 46.3C that Mr. Sowers could not be held responsible under 46.3C as a trainer because he was not the trainer of record. Commissioner Dresser stated that as of right now she would support that unless Mr. Jackson is able to explain it to her how it should be interpreted differently. Mr. Jackson stated that sometime you look at a wall and it's very blank and sometimes you see the handwriting on the wall. The Commission is not comfortable with this rule as it relates to substitute trainers for that day. Who



do you hold responsible. He thinks the Commission is not comfortable holding anyone other than the trainer of record responsible for any actions concerning that horse. That has not been his understanding or his interpretation but he gathers from the Commission's discussion that if we sat here and he has to agree with Mr. Childs provided testimony that he doesn't believe it's going to change the Commission's mind as to what action they can take because there's nothing in the rule that makes a substitute trainer responsible for any actions that day. Commissioner Dresser stated that just to clarify, she thinks he is responding to what she said. Let's make sure that we are all on the same page. Mr. Jackson stated that Mr. Guay pointed out that if a matter of law your interpretation is that a substitute trainer is not responsible for the care and custody of the horse then, he is absolutely right, if the trainer is not there and nobody else is responsible for those horses the horses will be scratched; therefore the provision we made for substitute trainers is useless. He is not going to say that he is absolutely 100% correct. It's your rule. You interpret it. If you find in Mr. Childs favor then he would recommend that you immediately go into emergency rulemaking to protect the industry from either horses being scratched or making a substitute trainer responsible for the actions of that horse that day. Something has to be done. The reason this came about is because of the sire stakes races. He sees where the Commission is headed and they brought the case to you and it was a very valid case in his estimation and maybe the rule isn't perfect in their interpretation. Attorney Guay stated that he suggest a stipulated finding that avoids the whole substitute trainer issue because the fact is his understanding that Mr. Wright never informed the judge that Mr. Sowers was the trainer. They don't get to the concept of what the duties are of the substitute trainer is under that circumstance, so he thinks the stipulated finding would be that since Mr. Wright had not designate Mr. Sowers as the responsible party he cannot be cited for any violations under 46.3C. Would you agree with that Mr. Childs? Mr. Childs stated yes. Attorney Guay stated that it exploits a factual weakness in your case and avoids a rule interpretation that needs further review. Mr. Jackson stated that it's not a factual weakness in his case. It's a factual weakness in the interpretation of the rule and doesn't spell out exactly what action can be taken by the Commission for a violation, but he would stipulate to the findings. Attorney Guay stated that if Mr. Wright had designated Mr. Sowers then we get to the question. In this case, you have previous discipline on Mr. Wright that he never told Mr. Bacon that he was the responsible party. We never get to that sentence in interpreting what that means because he was never put in that position. Mr. Jackson stated that he couldn't disagree with him. Attorney Guay stated that he would propose then that the Commission accept stipulated facts that Mr. Wright did not designate Mr. Sowers as the responsible party under section 46.3C; therefore, a violation under section 46.3C shall not hold and grant the appeal. Does anyone else have another suggestion? Mr. Jackson stated for a point of clarification the trainer of record must prior to indicate as to who will be the person responsible notify to post has no bearing. Attorney Guay stated that he would have you vote on a stipulated fact that Mr. Wright trainer of record did not identify Mr. Sowers as the responsible part to the judge on 10/7/14 pertaining to the race horse Northern Smokeout. Do the Commissioners agree to that finding? **Voted 4-0.** Do the Commissioners then conclude as a matter of law that since Mr. Sowers was not identified as the responsible party he cannot be subject to liability under section 46.3C.? That's the conclusion of law. The Commissioners all agreed. Commissioner Duncan asked for the sake of the audience could you please read section 46.3C. Attorney Guay stated that the language reads "The trainer shall be present in the paddock from the time his/her horse(s) enter the paddock until all of his or her horses have raced. A horse(s) will be scratched if the trainer is not in the paddock pursuant to this rule, unless the trainer has specific approval of the Presiding Judge to be absent from the paddock. The trainer must notify the Presiding Judge of his absence and identify who will be responsible for the horse(s) scheduled to race at that track that day and provide necessary documentation to the Paddock Judge prior to the day's racing program." The Commission struggled with the interpretation of that language. Is there any comment from the public? Mr. Hitchcock asked if they go into this emergency rulemaking that you look at

other jurisdictions and racing commissions to see if they have some interpretations of this rule at all because some of our rules are out there from other jurisdictions and it seems like we are sometimes over micromanaged. Commissioner Dresser stated that they would take a look at that. Attorney Guay stated that this is an excellent opportunity; you hear the issue that the department can start enforcing this rule because there isn't a substitute trainer. Mr. Childs stated that a horse needs one trainer and the trainer responsibility rule is a very strict rule. Attorney Guay stated that are you suggesting that the rule should be changed so that the trainer does not need to be in the paddock. Mr. Childs stated that the trainer is responsible whether the trainer is in the paddock or not. Attorney Guay stated that's the tension that the rule says that the trainer shall be present in the paddock. Mr. Jackson stated that the problem being is when the horse is brought into the paddock and it's not brought in by the trainer and the trainer is not going to be there who is responsible for that horse in the paddock. That's his concern. That's why they changed 46.3C to allow for someone other than the trainer to be responsible for that horse in the paddock. It doesn't absolve the trainer responsibility rule. No way does it ever absolve the trainer, but if someone is designated to be responsible for that horse and that person does not guard that horse from being interfered with by another party; that party should be responsible for allowing that horse to be interfered with. These are things that they need to take a look at when the trainer is in Scarborough and the horse is in Bangor. Dr. Matzkin stated that every race day there are people racing for other people. He doesn't have a problem with a trainer giving responsibility to someone to race their horse that day. The problem is when they have people on paper as the trainer and they have no responsibility for that horse. He is not saying that is the case here but that's the scenario that bothers him. People training horses and showing up with them every day and they are not the people on paper. Mr. Hitchcock stated that he has a stable of 20 to 25 horses and when he has two horses racing, he's not going to Scarborough to race two horses when he has grooms that he can trust to take care of the horses to race them. When he calls the judge and tells them that someone is going to be the contact person for his horses is one thing, but trainer responsibility should always be the person who is down as the trainer. Commissioner Dresser stated that it comes down to definition of responsibility. Here we have a rule that provides for trainer responsibility. The trainer responsibility rule states the trainer has ultimate responsibility and if you send your horses with your brother and something happened you are still on the hook. Ms. Perkins stated that she was there when they talked about this very rule and they talked about these situations that we are talking about today. We also talked about what other states do. She thinks that they should tighten up the rule a little bit. Mr. Jackson stated that there was a discussion of providing for assistant trainers where some of the other jurisdictions have. The condition of the horse is the responsibility of the trainer of record but the problem he has is who is responsible for caring for and guarding that horse the day that it's in the paddock when the trainer is at another site. Commissioner Dresser stated that she doesn't know if you have to take it to the extreme. What if the horses number isn't secure, who is responsible for that; the trainer is. If the trainer is not there who gets the fine. Attorney Guay stated that the person responsible would be. Mr. Bacon stated that any person, any trainer, any owner is not acting as a trainer he is acting as a responsible licensee; that's what he is doing. If he is a responsible licensee, and he is sanctioned by this Commission and he goes into the paddock and he is supposed to guard that horse and he doesn't. How are you going to blame a trainer that's not even there?

Mr. Jackson stated that he understood the frustration that Mr. Bacon has. However, he understood the discussion the Commission had and it doesn't correct the situation. We've got to make people responsible if they've assumed that responsibility. Attorney Guay asked if a groom would be responsible for a horse bleeding. Mr. Jackson stated that if he has assumed the responsibility to take that horse in the paddock and the judge has been notified and he realized the timing is off. Attorney Guay asked if it mattered. Could you not bring an action against a licensee other than as a trainer? Mr. Jackson stated that he would suggest very strongly that when they look at this rule that only

another trainer may have that responsibility and no other licensee. Then you can take action against another trainer. Commissioner Dresser stated that she will check out other states rules and she suggest that the Maine Harness Horsemen's Association discuss it and the breeders within the next couple of weeks if you can get some information to her.

3. Attorney Guay asked Mr. Jackson if he had indication that Ms. Sprague had received notice of the hearing. Mr. Jackson stated that Mr. May hand delivered the notice of hearing to Ms. Sprague. Attorney Guay stated prior to opening the hearing he is making inquiry as to the absence of the licensee and Mr. Jackson has submitted a fax from Ms. Sprague. He read into the record: "Please let it be known that I am anxious to resolve the complaint coming before the commission on January 8, 2015. It is with regret that I am unable to attend and stand before this commission. My mother (Julia Farris) has recently experienced an increase in medical issues which require her to be cared for and attended to on very frequent time table (hourly). It is for this reason that I would prevail upon you to ask this commission if they would entertain a consent agreement of some sort due to the unforeseen circumstances that are present. In anticipation, I am sending forward my statement; Respectfully, Donna Sprague." Ms. Sprague is accused of violating a prohibited substance a class 2. Procedurally her cases would not have been considered for a continuance. Mr. Jackson stated that he would not continue the matter unless the Commission is willing to agree with Ms. Sprague's request for some sort of resolution other than a hearing before the Commission. She has asked for a consent agreement. It could be a stipulation of finding by the Commission providing facts. If you go forward with her hearing in her absence, the Commission can make a finding and impose if they find the facts are true and accurate then they can impose any penalty they want to in her absence. Attorney Guay asked if there was any reason why a consent agreement would be preferable to just doing the hearing and having the Commission finding facts in your opinion. Mr. Jackson stated that it would give the executive director an opportunity to negotiate a settlement without having to go through a prolong process of a hearing to produce evidence. Attorney Guay suggested prior to opening the hearing, hear the recommendations by Mr. Jackson and give him authority to offer a consent agreement. Absent the consent agreement occurring if that's the path you chose to go down then they would proceed with the hearing into February. If she hasn't indicated she would take the consent agreement. The other course of action would be to open the hearing and have Mr. Jackson put the evidence in and then you deliberate and make your findings. That is his suggestion. If you would entertain a recommendation by Mr. Jackson for what authority he would like to have. Mr. Jackson stated that he would ask that the Commission impose a 6 month suspension of all licenses beginning April 1, 2015 and he would recommend a fine of \$750.00, a return of the purse earned by the horse Shank You in the race conducted on June 21, 2014; and he would ask that the second violation that occurred on June 27, 2014 be filed and that when Ms. Sprague was to return to racing if she chooses to do so if there was a violation within 6 months upon her return that complaint no. 0016 would be put back on the docket for the Commissions consideration and any other allegations of a violation of Chapter 11. Attorney Guay stated to be clear then the consent order would she stipulate to the facts of both violations. Mr. Jackson stated yes, she would stipulate to the facts of both violations. Attorney Guay stated that there would be adjudication on the first violation as you described; 6 months suspension and \$750 fine and return of the purse and on the second violation even though she stipulated to the facts the case would be dismissed later. Mr. Jackson stated yes, he would ask if there were no further violations after 6 months upon return to racing if she did chose to return that the complaint no. 0016 would be dismissed. Attorney Guay asked if there was a purse involved in that case. Mr. Jackson stated yes. She would pay both purses. Attorney Guay stated that she would only pled to a violation of the first offense. Mr. Jackson stated yes. Commissioner Dresser just wanted to make so that they don't run into any problems if they are filing the second one which is effectively a continuance pending the absence of certain things within a year. Can they require the return of the purse?

Attorney Guay stated yes you can. Commissioner Dresser asked if there was any suggestion as to the suspension of the horse. The rule calls for the suspension of the horse. Mr. Jackson stated that if that would be the thoughts of the Commission then yes he would require that the horse be set down for a 30 day period. Attorney Guay stated just for legal clarification any remedy available under law is available under consent agreement. As a matter of fact for example, a return of the purse, if the rule only allowed for a 6 months suspension you could actually in a consent agreement ask for a 12 month suspension you could go beyond what the law because it's a consent agreement; it's not an adjudication. Commissioner Dresser stated that Mr. Jackson followed within the guidelines for the class II first offense during the lifetime of the licensee. Is that accurate? Mr. Jackson stated yes. He also researched and did not see where Ms. Sprague had had a violation of a class I, II drug to the best of his ability to research the information available to him. She is rather a clean operator. Attorney Guay stated that he wanted to repeat this; the concept is that we are going to continue the hearing, offer a consent agreement and if she doesn't agree to the consent agreement, we are going to do the cases in February. The consent agreement will include admitting to the facts in the complaint of the presence of the substances in the animals; it will admit that for the first race that it was a violation under the statute; as for the second complaint no. that case will be dismissed on a date certain if there are no further violations. If there are further violations, the case will proceed of course she would have already admitted to the facts and it will be a very easy case to win. In terms of the penalties, 6 months suspension effective April 1<sup>st</sup>, set the horse down 30 days effective April 1<sup>st</sup>, \$750 fine and the return of both purses. Commissioner Dresser asked if they were contemplating the allowance of the horse being moved to a different trainer or how does that work. Mr. Jackson stated that all of her licenses will be suspended as an owner/trainer. Until April 1<sup>st</sup> she may continue to operate. Come April 1<sup>st</sup> her licenses are suspended, the horse is down for 30 days and then he would stipulate in the consent agreement that the fine and purses must be returned by a given date. Commissioner Dresser asked if they need a vote. Attorney Guay stated that the four of you need to discuss whether or not you think that is a good outcome. Commissioner Dresser asked for a motion. Commissioner Duncan made a motion to go along with the consent agreement put forth by Mr. Jackson regards to Ms. Sprague and the horse Shank you of the positive test of caffeine. If she doesn't agree to that, then we have a hearing in February. Commissioner McFarland seconded the motion. Commissioner Dresser asked for discussion. There was no discussion. She called for a vote. Vote 4-0. Attorney Guay stated case no. 2014 MSHRC 0015 and 0016 will be continued until the February meeting of the Commission.

#### UNFINISHED BUSINESS:

1. Commissioner Dresser asked for any unfinished business. Mr. Jackson stated that the public hearing has been scheduled for public comment for Chapter 11 and 17 for January 29, 2015.

#### NEW BUSINESS:

1. None.

#### REPORTS:

1. Mr. Jackson stated that the MHHA meeting is being conducted on January 17, 2015. On January 23 and 24 the annual meetings and convention of the Maine Association of Agricultural Fairs will be conducted at the Holiday Inn in Portland and on Friday the race directors have their annual meeting in Portland and the Commission members are welcome to attend. On Saturday at 1:00 is the general session of the association and you can contact Fred Lunt. Anyone interested in attending the banquet for tickets contact Fred Lunt.

2. Mr. Jackson stated that the yearend numbers for the handle are not in yet. The wagering at Oxford is down 1.2% lower than we were in 2013 and Bangor is approximately 3.3% less than it was

in 2013 which results in a lot less decline in the revenue than what he anticipated. There will be approximately \$140,000 that he will have to disperse from the sire stakes fund for those individuals that participated in 2014. The number of divisions that were contested in 2014 was down from what was anticipated. It will be distributed in a matter they did in 2006 based on points earned and that's the 5 placing points and not the 6.

**OTHER BUSINESS:**

1. None.

**PUBLIC COMMENT:**

Commissioner Dresser asked for public comment. Ms. Perkins stated that they currently have 29 stallions nominated for their program. Their winter banquet has been changed to February 21, 2015.

Mr. Jackson introduced the new executive director of the Maine Harness Horsemen's Association as Jason Gravel.

**EXECUTIVE SESSION:** None.

The meeting adjourned at 12:30 p.m.

Respectfully submitted by:  
Henry W. Jackson  
Executive Director